

SENIORS & THE LAW

A Guide For Maturing Californians

HEALTH
SENIOR
DISCOUNTS
CAREGIVERS
SOCIAL
SECURITY
MEDICARE
WILLS
ELDER
ABUSE

DRIVING
PENSIONS
ESTATE
PLANNING
HOUSING
MEDI-CAL
RETIREMENT
NURSING
HOMES

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You have reached your “golden years.” Or your parents have reached theirs. You have a lot of company. With some 4.7 million residents age 60 or older, California is the most senior-populated state in the nation. And that number is growing. So, too, are the legal rights of seniors and the many programs geared for them.

As you become a senior, you will face new challenges. Will you have enough money to make ends meet? Will you become incapacitated? Will you be able to get around if you cannot drive? Will you wind up helpless and alone—or even abused? You may be a more likely target in a wide range of consumer scams as well, from home repair offers to mail-order schemes to living trust “mills.” Slick con artists set their sights on seniors.

At no other time in your life has it been more important to plan ahead—and to know your rights. You may not be aware of the many laws, benefits and special services available to help you stay in charge of your life. “Seniors and the Law” touches on some of them and provides contact information for numerous resources. Keep in mind that this guide is intended to provide you with general information. Laws are constantly subject to change. If you have a specific legal problem, you may want to consult an attorney.

MAKING ENDS MEET

You may be tapping into retirement benefits for the first time. You may be house-rich but cash-poor. Or you may be struggling just to get enough to eat. How you make ends meet will depend on your particular circumstances. But in your senior years, it will likely involve new types of income—Social Security, Supplemental Security Income, a pension or maybe a reverse mortgage.

What is Social Security?

It is a government program that provides regular benefits to eligible workers and their families after the worker retires, becomes severely disabled or dies. Social Security taxes from employees, employers and self-employed workers help fund the program. If you have paid into the program long enough—roughly 10 years—you will be eligible for full benefits sometime between the ages of 65 and 67 (depending on your date of birth). What you receive will be based on your past earnings. You may qualify for reduced benefits at age 62. But such benefits, if taken at that age, will remain at that lower level permanently.

Or, you can put off collecting any benefits until age 70. You will receive delayed retirement credit and wind up with a larger monthly check—as much as 8 percent more for each year beyond your retirement age. To find out how employment income might affect your benefits, see the section entitled Staying on the Job. And for information on the potential impact of your marital status, see Getting Divorced or Remarried.

Traveling or living in most foreign countries will not affect your eligibility for benefits. However, you

KEY code abbreviations

BPC	BUSINESS AND PROFESSIONS CODE
CC	CIVIL CODE
CCP	CODE OF CIVIL PROCEDURE
FC	FAMILY CODE
GC	GOVERNMENT CODE
HSC	HEALTH AND SAFETY CODE
IRC	INTERNAL REVENUE CODE (U.S.)
IC	INSURANCE CODE
LC	LABOR CODE
MV	MILITARY AND VETERANS CODE
PC	PENAL CODE
Prob.	PROBATE CODE
PRC	PUBLIC RESOURCES CODE
RT	REVENUE AND TAXATION CODE
UIC	UNEMPLOYMENT INSURANCE CODE
VC	VEHICLE CODE
WI	WELFARE AND INSTITUTIONS CODE

should contact Social Security if you plan to leave the country for 30 days or longer.

To check your earnings and benefit status, call 1-800-772-1213 (www.ssa.gov) for a free personal statement from the Social Security Administration. To find out what other types of benefits might be available to you, you could also check the National Council on the Aging's "benefits checkup" web site (www.benefitscheckup.org).



What is a representative payee?

A representative payee is someone who is authorized to receive your Social Security checks for you. If you have trouble managing your checks, for example, the Social Security Administration might appoint a relative or friend of yours to receive the payments for you. (A power of attorney is not sufficient for cashing such checks.) By law, a representative payee can only spend the funds on your needs—and could be convicted of misusing funds if he or she were to do otherwise.

Veterans can contact the U.S. Department of Veteran Affairs and railroad retirees can contact the Railroad Retirement Board about similar payee programs. (See Resources section.)

What is Supplemental Security Income (SSI)?

SSI is a cash assistance program for U.S. citizens and some non-citizens who are age 65 or older, blind or disabled. Only those with limited resources can qualify for monthly checks in an amount based on the individual's circumstances. In California, the program is administered with additional funding from the State Supplemental Program (SSP). Even if you believe you will not qualify for more than a very small amount of SSI/SSP funding, it may be worth your while to apply for such assistance. As a recipient, you are automatically eligible for free health benefits under Medi-Cal. And you may receive other benefits, such as In-Home Supportive Services, as well. (WI §§ 12000, 12300 et seq) You can apply for SSI/SSP at your local Social Security Administration office.

What is a reverse mortgage?

A reverse mortgage allows you, if you are 62 or older, to receive cash advances based on the equity in your home. If you own your home but have little income, this type of loan may assist you in making ends meet. You generally will not have to pay anything back until you sell your home, move out or die. Nor is there any prepayment penalty. And you can never owe more than the value of your home. To obtain such a loan, you must use a licensed lender. (CC § 1923) In addition, you must get counseling before applying for such a loan. (The lender is required to provide information on counseling agencies.) With so much at stake, you should make sure that you understand any potential complications before signing such a loan.

You can get more information on reverse mortgages and local non-profit counseling agencies by visiting the U.S. Department of Housing and Urban Development's web site or the AARP's web page. (See Resources.)

Is there any special tax relief for seniors?

Yes. If you are at least 62, blind or disabled, you may qualify for homeowner or renter assistance. You must be a U.S. citizen or legal resident and have a maximum annual income of \$37,119. For more information, contact the Franchise Tax Board. (See Resources.)

You may also be eligible for property tax postponement for low-income seniors and disabled citizens. If so, the property tax payment for your house (or mobile home) can be postponed until you sell the property or your estate is settled. (RT § 20581) For an application to postpone your property tax, contact the State Controller's office. (See Resources.)

Homeowners of any age can file a homeowners property tax exemption with their county assessor's office to claim a tax exemption on \$7,000 of the market value of their home. (RT § 218)

As a senior, you may also be eligible to keep your property tax at the same level if you sell your home and buy another home with the same or lesser value. (See Choosing Where to Live.)



Can I get any help paying my gas and electric bills?

If you have very little income, you may qualify for California Alternate Rates for Energy (CARE). This program offers a discount for such services. (CC § 798.43.1) For information and an application, contact your local energy company.

What can I do if I can't afford to eat?

Find a nutrition site in your community. Every county has them—usually in senior centers. You and your spouse can get hot meals at such facilities as long as one of you is age 60 or older. (WI § 18327) The nutrition program in your area may provide transportation as well. You may make a donation, but the meals are free. (WI §§ 18325-18335) And if you are homebound, you can have hot meals delivered to you. The cost will depend on your ability to pay. (WI §§ 9500-9501) Your county's Area Agency on Aging can provide you with information on local nutrition sites. (See Resources.)

Counties also offer food stamp programs to supplement or cover the grocery bills of those in need. Contact your county welfare department to determine if you are eligible. Applications are available at Social Security Administration offices.

Is there any financial assistance available for seniors who are immigrants?

Yes. California's Cash Assistance Program for Immigrants (CAPI) is for seniors who meet all the criteria for SSI/SSP cash assistance but have been turned down because of their immigration status. Such seniors may be able to get almost the same amount of cash as they would have received through SSI. (WI §§ 18938, 18941)

If the senior came to this country before Aug. 22, 1996, he or she is probably eligible for CAPI. If he or she did not obtain a green card until after that date, however, the situation is more complicated. And if the senior arrived in this country more recently, there may be additional hurdles, depending on the senior's circumstances, sponsor and resources.

If you are a senior immigrant who is not eligible for CAPI, however, you may qualify for another type of assistance. If you have very little income, for example, you may be able to get help through General Assistance (GA) or General Relief (GR). Or, if you are a recent refugee, you may be able to get Refugee Cash Assistance (RCA). Or, if you are raising a grandchild or other young relative, you may qualify for another kind of benefit. (See Raising Your Grandchildren.)

For more information on CAPI, GA/GR or RCA, contact your local human services department or Area Agency on Aging.

CHOOSING WHERE TO LIVE

Most people prefer to remain self-sufficient for as long as possible. In your senior years, however, your circumstances—a change in your health or finances, for example—may call for a new living arrangement.

Can I get a tax break if I downsize to a smaller home?

Maybe. In some counties, if you are over age 55 (or severely or permanently disabled) and you sell your home to buy another home of the same or lesser value in the same county, your property tax will be calculated according to the base year value of your old home. In addition, some counties have ordinances allowing you to move from one county to the next—and still get the tax break. However, you will only get this property tax break once—unless you become disabled after receiving the tax relief based on your age. (RT § 69.5)

Also, regardless of your age, you can sell your home for up to \$250,000 in tax-free profit without owing capital gains tax—if you have owned and lived in your home for two years during the five years prior to the sale. If you are married and file a joint return, you would generally be allowed up to \$500,000 in tax-free gain from the sale of your home. (Internal Revenue Service (IRS))

DISCOUNTS Travel and Recreation

Your advancing years could result in some savings. As a senior—sometimes as young as 50—you can now travel, eat out, go to the movies and even visit national monuments at a cut-rate price. Just ask for the senior discount and—in many cases—you will get one.

If you are at least 62, you can get discounted rates for day use and camping facilities at CALIFORNIA STATE PARKS. And if you are a senior with a low income, you may be eligible for a GOLDEN BEAR SENIOR STATE PARKS PASS, which would entitle you to free parking and day use at many state parks. (PRC § 5011) Such passes are available for a \$5 annual fee at any state park or district office.

At age 62, you qualify for a NATIONAL PARK SERVICE GOLDEN AGE PASSPORT. This is a lifetime entrance permit (after a \$10 processing fee) to national parks, monuments, recreation areas and national wildlife refuges. It also provides a 50 percent discount on federal use fees for facilities and services. For information, call 1-202-619-7289, visit www.fs.fed.us or write to the National Park Service, 1100 Ohio Drive S.W., Rm. 138, Washington D.C. 20242.

Can a landlord turn me down as a tenant because I am a senior?

No. It is illegal for landlords to discriminate against anyone simply because he or she is 62 years old or older. Nor is it legal to discriminate against a prospective homebuyer based on his or her age. (California Fair Employment and Housing Act, GC §§ 12900 et seq)

Can my landlord evict me for any reason at all?

If you have a long-term lease, your landlord cannot evict you during the lease term unless you violate one of the lease provisions, such as failing to pay your rent. With a month-to-month lease, your landlord, in general, simply needs to give you 30 days' notice and, in most cities, does not have to give a reason. If you have lived in the home for at least a year, he or she must give you 60 days' advance notice. (CC § 1946.1 (b)) There are, however, exceptions. For example, your landlord cannot evict you in retaliation for filing certain legal complaints. Nor can your landlord discriminate against you based on your age or various other personal characteristics. And if you live in a mobile home park (CC § 798.55) or in a community with a rent control ordinance, it could be more difficult to evict you.

If, however, you fail to pay rent, destroy or severely damage the property, use it for unlawful purposes (selling drugs), substantially interfere with the rights of other tenants or violate any other provision in the lease agreement, you could receive a written notice to move out in three days.

Can I stop the eviction if it will leave me without a home?

The fact that an eviction will leave you homeless is not a legal defense. However, you cannot be kicked out of your home without a court order issued by a judge. And even then, only a sheriff or marshal can actually evict you. Your landlord cannot lock you out or shut off your utilities without going through a legal process. (CC § 789.3) For example, if you break your rental agreement by failing to pay your rent, your landlord could send you a three-day notice. If you did not violate your rental agreement, the landlord could send you a 30-day notice. Then, after the notice period is over, he or she could file an unlawful detainer seeking a court-ordered eviction. (CCP § 1161) A copy must be delivered to you. At that point, you would have five days to oppose the eviction by filing a written answer with the court. Seek legal help immediately. If you ignore an unlawful detainer, it could result in a default judgment authorizing immediate eviction.

If you cannot afford the fee for filing an answer, you can submit a form asking the court to waive it. And if you have very little income and cannot afford an attorney, you may qualify for assistance from a local legal aid society. (See Getting Legal Assistance.)

Even if the court authorizes the eviction, however, you may have a last resort. You could file a petition for relief from forfeiture. If the eviction would be harder on you than your continued residence would be on the landlord, the judge may allow you to stay put if you are able to pay the rent. (CCP § 52.5)

You also could ask the judge to postpone the eviction to give you time to prepare an appeal or to find somewhere else to live. Judges often grant such a request if you pay all of the rent up to your departure date. For more information on renting, obtain a complimentary copy of the State Bar pamphlet "What Should I Know Before I Rent?" (See Resources.)

HOUSING OPTIONS

If you need to cut costs or would like some company, consider shared housing. If you share housing with at least one other senior or disabled roommate, you may qualify for direct financial assistance. (HSC §§ 19902-19904)

Or, check out a senior citizen housing development, which is generally restricted to seniors who are at least 62 and disabled individuals who are at least 55. Such developments are specially tailored to seniors and may offer useful services. (CC § 51.3)

If you need assistance in your day-to-day life, you might look into senior housing in which you pay a monthly fee for an apartment, communal meals, housekeeping and, in some cases, transportation. Some facilities offer help with personal care as well.

Another option is an assisted living facility, which can provide home-like, non-medical services, such as a room, meals, laundry, transportation and some assistance with daily activities. Such facilities must be licensed. (HSC § 1569.10) All advertisements and correspondence must include the facility's license number. And the license must be posted in a prominent place at the facility as well. (HSC §§ 1569.30, 1569.68, 1569.81) Such facilities are not licensed to care for anyone who is bedridden or who requires 24-hour nursing care. (HSC § 1569.72)

A board-and-care home, another type of residential care facility for the elderly (RCFE), is often a converted private home housing up to eight residents who need some assistance with bathing, eating or other daily activities.

A continuing care retirement community offers all levels of care. By contract, the facility promises to care for you as you age—sometimes for the rest of your life—in exchange for an entrance fee and/or periodic charges (HSC §§ 1771 et seq). Before signing any contract, seek financial and legal advice, and carefully weigh the risks, benefits and costs. In addition, make sure that you understand exactly what the facility is promising to do for you. (HSC § 1770) Entrance fees can range from \$10,000 to \$500,000, with additional monthly fees of \$800 to more than \$3,500.

To check the license of any facility that provides medical care, call the California Department of Health Services' licensing and certification program at 1-800-236-9747. To verify the license of a facility that does not provide medical care, call your local California Department of Social Services Community Care Licensing office. (Check your local listings or visit www.cclid.ca.gov.)

See Finding a Caregiver or Nursing Home for living arrangements involving greater assistance. And for more information on your alternatives, you might contact the California Registry, which can provide you with a free list of assisted living, residential care or nursing home options based on your needs, budget and location. Or, check the web sites maintained by the U.S. Department of Housing and Urban Development (HUD), the state Department of Health Services and AARP. Your local Area Agency on Aging may be able to assist you as well. (See Resources.)

Can I install grab bars, lower my countertops or make other needed modifications against my landlord's objections?

Yes, you have the legal right to do so if the modifications are necessary for your "full enjoyment of the premises." You may have to promise that you'll return the apartment to its original state when you move out, but your landlord cannot prohibit such changes. (CC § 54.1) You can file a complaint with the

California Department of Fair Employment and Housing or HUD. And for more information on your rights, you could call the Department of Consumer Affairs for a referral to a local tenants rights office. (See Resources.) You might also request a copy of the Department of Consumer Affairs publication “California Tenants: A Guide to Residential Tenants’ and Landlords’ Rights and Responsibilities.” And for an online list of local tenant resources, go to <http://directory.tenantsunion.org>.

Can my landlord prohibit me from keeping a pet?

No, not if you are over 60 and live in rented housing owned or operated by the state or by a city or county. State law allows you to keep up to two pets. (HSC § 19901) Federal law also allows seniors and disabled persons living in federally assisted rental units to keep pets. This does not apply to private landlords.

OBTAINING HEALTH CARE AND BENEFITS

Understanding your health care rights, sorting through insurance policies and finding a way to pay your medical bills can be daunting tasks. But there are resources to help educate you about your rights and help you weigh your options.

Can I get health insurance after my retirement?

You may be entitled, by law, to continued coverage under your employer’s group health insurance plan for a short period of time. In addition, some employers actually maintain health insurance for their retired employees. But obtaining private individual coverage as a senior can be expensive and difficult, particularly if you have a pre-existing condition. As a senior, however, you do have other options. Medicare, Medigap policies, health maintenance organizations (HMOs), long-term care insurance, Medi-Cal or veterans’ benefits may help cover your medical and long-term care expenses.

What is Medicare?

Medicare is a federal health insurance program that primarily covers Social Security recipients who are at least 65, individuals under 65 who have long-term disabilities, and those who need kidney dialysis or a kidney transplant. Your income level and assets have no bearing on your eligibility for coverage.

The program has two components: Part A—referred to as hospital insurance—covers in-patient hospital care, some skilled nursing and home health care, and hospice care. Part B—which has a \$58.70 monthly premium (in 2003)—helps pay for additional medical services. It also may cover physical and occupational therapy and some medically necessary home health care. Generally, Medicare participants can choose between managed care plans (often referred to as Medicare HMOs) and fee-for-service coverage. The participant pays deductibles, co-payments and, in some cases, a monthly premium. Medicare then pays the rest of the tab for covered services.

What is Medigap?

It is supplemental health insurance that can help pay some of the expenses that are not covered by Medicare. For example, Medicare does not pay for prescription drugs. In addition, a Medicare participant's co-payment for a hospital or skilled nursing facility stay can increase in amount after a certain number of days. Supplemental insurance helps cover some of these additional costs. However, it is important to carefully consider your particular situation in deciding whether such insurance is worth the extra expense.

How is Medi-Cal different from Medicare?

Unlike Medicare, Medi-Cal is a health insurance program based on need. It pays for the health and medical care of seniors who are at least 65 years old and who have very limited resources and income. (If you receive Supplemental Security Income, you automatically qualify for Medi-Cal benefits.) But even if you do not meet the strict financial need requirements, you could still qualify for Medi-Cal benefits if you are at least 65, blind or disabled, and have very little money or property. In such a case, however, you might have to pay a portion of your medical expenses yourself as a "share of the cost." (WI § 14005.7)

Medi-Cal covers, among other expenses, doctor visits, lab tests, prescription drugs and dental care. And while Medi-Cal would not cover a senior's residence in a board-and-care home, it would provide nursing home benefits. For more information on Medi-Cal eligibility and benefits, call your local Area Agency on Aging or your county social services agency.



As a veteran, am I entitled to additional health benefits?

Probably. As a veteran, you may be eligible for health care services at more than 50 medical centers and clinics throughout the state. Depending on your income, you may pay just \$15 to see a primary care doctor and \$50 to see a specialist. In addition, your medicine could cost no more than \$7 per prescription and you may be entitled to some dental care. For more information, call the U.S. Department of Veteran Affairs. (See Resources.)

Do I need long-term care insurance?

It depends on your situation—your health, financial resources and arrangements for future care, for example. There may come a time when you need daily help with bathing, dressing and preparing meals. Or, you may even need long-term, round-the-clock assistance. Such care can put a serious financial strain on you and your loved ones. Unlike Medicare, long-term care insurance covers custodial care. (Medicare covers nursing facility and home health care only if it is skilled care and medically necessary.) In addition, such insurance may cover home health care, adult day care, nursing home care, the cost of an assisted living facility and respite care.

Before investing in this type of policy, consider your circumstances carefully and seek free counseling from California's Health Insurance Counseling and Advocacy Program (HICAP). To locate a local HICAP counselor, call the California Department of Aging. (See Resources.)

How can I find out more about my various health care options?

Call HICAP for counseling. HICAP is a network of community-based programs that provide free education, counseling and assistance to Californians about Medicare and related health insurance coverage. Additional resources include: Medicare, the California Department of Insurance and your local Area Agency on Aging. (See Resources.) In addition, if you have questions or complaints regarding your HMO, you can contact the California Managed Health Care HMO Help Center at 1-888-466-2219 (www.hmohelp.ca.gov).

PLANNING AHEAD

You can only stay in charge of your future affairs if you plan ahead. The law allows you to build a retirement nest egg in special tax-deferred accounts. It allows you to prepare written instructions regarding medical treatment in case you become incapacitated. It allows you to appoint someone to make decisions for you if it ever becomes necessary. And it allows you to decide who will inherit your property someday. But the right to have your wishes carried out later is worthless unless you act now — while you still can.

How can I help ensure that my affairs will be handled my way if I become incapacitated?

You can take certain legal steps. A power of attorney is a written legal document that gives another person the right and authority to act on your behalf. (Prob. § 4014) That authority will end if you become incapacitated — unless you have a durable power of attorney. A durable power of attorney will remain in effect or take effect if you ever become incapacitated. (Prob. § 4124) This means that if you were suddenly unable to handle your own affairs, someone you trust — your legal agent or attorney-in-fact — could do so for you.

You can authorize your agent to simply pay your bills. (This is usually a safer arrangement than adding someone else's name to your bank account.) Or you can empower your agent to handle nearly all of your affairs. Your agent, however, cannot take anything of yours as a "gift" without your specific written authorization. (Prob. § 4128) And both the power of attorney and durable power of attorney are revoked when you die. (Prob. §§ 4128, 4152) Make sure that you understand all of the terms before signing a power of attorney. And be absolutely certain that your chosen agent is both capable and trustworthy. Seniors have lost their life savings to unscrupulous agents.

With an advance health care directive / durable power of attorney for health care (DPAHC), you can designate someone to make medical decisions for you in the event that you become unable to do so for yourself. (Prob. §§ 4605, 4629, 4682). You could name an alternate agent as a backup. In addition, you can include detailed instructions regarding your future medical care, such as the use of life-support equipment, in your directive. Simply fill out the available printed form. It must be notarized or witnessed by two qualified individuals. (You can revoke the directive at any time, as long as you are still competent.) Give copies to your health care agent, alternate agent, doctor, health plan representatives and family. And if you are admitted to a hospital or nursing home, take a copy with you. (Prob. § 4701)

To obtain an advance health care directive kit (in English or Spanish) for \$5, contact the California Medical Association at 1-800-882-4262 (www.cmanet.org). Or, you could ask your physician for one.



What is a living will?

A living will is a legal document stating that you do not want life-sustaining treatment if you become terminally ill or permanently unconscious. It should not be confused with a will or living trust, which serve different purposes. In California, a living will is known as a Natural Death Act Declaration. Since the repeal of the Natural Death Act in 2000, however, it has been replaced by the newer advance health care directive, which may include treatment instructions as well as a durable power of attorney for health care. (Prob. §§ 4623, 4665) Any Natural Death Act Declaration created before the Act's repeal would still be effective.

Can I be barred from handling my own affairs for any reason?

Yes. To consent to medical treatment or make a legal contract, for example, you must be able to understand the nature and consequences of your actions. The law refers to this as having sufficient capacity. (Prob. §§ 811-813, 4120; CC § 38). If you lose such capacity, the agent named in your durable power of attorney may step in on your behalf. Or, if you haven't made such arrangements, the court may appoint a conservator.

What is a conservator?

A conservator is someone authorized by the court to manage your affairs. A conservator may be appointed if you become unable to make sound decisions, feed or dress yourself, handle your finances or resist undue influence. (Prob. § 1801) Conservators may be family members, friends or, in some cases, the county public guardian. But, unlike an agent with a durable power of attorney, a conservator will receive court supervision in the handling of your affairs. (Prob. § 1851.5) And you should be aware that a conservatorship can be expensive and will be paid for out of your funds, if you have any.

You can nominate your own conservator in an advance health care directive for a judge's future consideration. (Prob. § 4672) Even after a petition for conservatorship has been filed, you can nominate your own conservator if you have sufficient capacity to do so.

(Prob. § 1810) If someone seeks to have a conservator appointed for you, you must be notified. And you may oppose the conservatorship in a court hearing. (Prob. § 1826)

Do I need a will?

Yes, you need a will if you want any control over who will inherit your property. Even if you own very little, you can earmark a particular piece of jewelry or a cash gift for a person or charity of your choosing. You can nominate guardians for your young children in your will. You can express your funeral and burial wishes. And you may name your own executor to carry out your wishes. The

executor—once officially appointed as your personal representative by a judge—will collect and manage your assets, pay off debts and distribute your property. (Prob. §§ 6101, 8400-8402, 8420, 8802, 9050)

Your will may be handwritten. Or you can fill out a California Statutory Will. This may be useful if you have very few assets. However, your will must meet strict requirements to be valid. And it should be kept up-to-date. If you do decide to revise it, do not make your changes on the original. You can amend your will with a separate legal document referred to as a codicil. You may want to consult an attorney before creating or changing such an important document. (Prob. §§ 6110, 6111, 6221, 6241)

If you die without a will (referred to as intestate), your property will go to your spouse, registered domestic partner or next of kin, according to California's intestate succession laws. (Prob. § 6401) And if you don't have a spouse, domestic partner or any relatives at all, your property will go to the state. (Prob. §§ 11900-11904, 6800)

How is the property in a will distributed?

Generally, the executor named in your will starts the process by filing a petition in court and seeking appointment as your personal representative. Your personal representative will take charge of your assets, pay your debts and distribute the rest of your estate to your beneficiaries. This court process is known as probate. Simpler procedures are available for transferring property to a spouse or if the estate amounts to less than \$100,000. (Prob. §§ 13100-13116, 13540-13545).

Does a will cover everything I own?

No. Generally a will does not control the distribution of life insurance proceeds, retirement plan assets, certain jointly owned assets, "transfer on death" or "pay on death" accounts and revocable living trusts. (Prob. § 5203) For more information on wills and estate planning, order free copies of the State Bar's consumer education pamphlets "Do I Need a Will?" and "Do I Need Estate Planning?" (See Resources.)

SAVE FOR RETIREMENT

Consider depositing your earnings (up to \$3,000 a year through 2004) into a tax-deferred Individual Retirement Account (IRA). As part of a "catch-up" plan, you can set aside slightly more if you are 50 or older. (RT § 17501; IRC § 408 (a))

Check out a non-traditional Roth IRA. If your annual adjusted gross income is less than \$110,000, you may qualify for such an account. (Your spouse's income could affect your eligibility.) The taxes are not deferred, but the distributions will be tax-free. (RT § 17507.6; IRC 408(a))

Find out if your employer offers a tax-deferred investment savings plan, such as a 401(k). Employees can set aside a portion of their earnings (up to \$12,000 in 2003 and as much as \$15,000 in 2006) for later. If you're 50 or older, you can generally put away even more.

Ask about your company's pension plan. Most pension plans include a survivor's pension. Contact your pension plan administrator. For general information, call the Department of Labor's Employee Benefits Security Administration at 1-866-444-EBSA (444-3272) (www.dol.gov/ebsa). Or, check the Pension Benefits Guaranty Corporation web site (www.pbgc.gov).

What is a revocable living trust?

It is a partial substitute for a will. With a living trust, your assets are put into the trust during your lifetime and transferred to your beneficiaries when you die. Most people name themselves as the trustee who manages the assets. This allows you to remain in control of the living trust assets during your

lifetime. You also can revoke or change your living trust. One advantage of a living trust is that the assets do not go through probate. And the distribution process often takes less time. (Prob. §§ 15000 et seq)

A revocable living trust, however, does not remove all need for a will. Generally, you would still need a will—known as a pour-over will—to cover any assets that are not included in the trust.

Also, be aware that a living trust is not appropriate for everyone. Whether it is the best option for you will depend on your particular circumstances. Watch out for unqualified “advisors” who sell living trusts in “trust mill” scams and seek to obtain seniors’ private financial information for other purposes as well. (See Avoiding Consumer Scams.)

The free State Bar pamphlet “Do I Need a Living Trust?” can provide you with more detailed information. (See Resources for the contact number.) And for additional resources on estate planning and a list of attorneys who are State Bar-certified estate planning specialists, call the State Bar’s Trusts and Estates Section’s “Senior Hotline” at 1-888-460-7364. Before creating such a trust, you should seek advice from a qualified estate planning attorney. (See Getting Legal Assistance.)

Will my beneficiaries’ inheritance be taxed?

It depends on the circumstances. Property left to your spouse or a charity will not be subject to estate tax. The portion of the estate that is left to anyone else—even your children—will be taxed if your assets total \$1 million or more in 2003. That exemption will jump to \$1.5 million in 2004 and 2005, \$2 million from 2006 through 2008, and \$3.5 million in 2009. In 2010, the estate tax will disappear completely. But in 2011, unless Congress passes an extension, the exemption will revert back to \$1 million. (IRS form 706, Pub. 950)

Under federal law, you can also give away as much as \$11,000 a year—\$1 million during your lifetime—to each of your children or to anyone else without incurring gift tax. (RT §§ 15104, 15310 and 15401 et seq) For information on estate and gift tax, contact an estate planning attorney. Or, call the IRS or State Controller’s Office. (See Resources.)

Can I just leave my savings in a bank account for later use?

Not for longer than three years—unless you contact the bank. If an account sits dormant for that long without any activity, the funds will be turned over to the state. (This would not apply if you have another active account at the same bank or financial institution.) Before transferring the funds to the state, the bank must send a notice to your last known address. (CCP §§ 1513, 1513.5) For more information or to reclaim such funds, contact the Bureau of Unclaimed Property in the State Controller’s Office. (See Resources.)

In addition, an FDIC-insured bank or savings institution may only insure up to \$100,000 of your money. If you have more in savings, you may want to divide it up among several FDIC-insured institutions. The FDIC pamphlets entitled “Your Insured Deposits” and “Insured or Not Insured: A Guide to What Is and Is Not Protected by FDIC Insurance” can provide you with more information. For free copies, call 1-877-275-3342 (www.fdic.gov).

DEALING WITH DEBT

Perhaps your debts have become unmanageable now that you are living on a fixed or more limited income. Maybe the unexpected costs of medical treatment or prescription drugs have pushed you to the brink. How you deal with the situation will depend on your particular circumstances.

What should I do if I am having trouble paying my bills?

You could contact your creditors and ask for more time to make payments. It might help to call a credit and debt-counseling agency. Shop for one that you believe gives good advice. For example, Consumer Credit Counseling Service/Credit Counselors of California—a network of non-profit agencies partially funded by creditors and HUD—often helps people work out plans with their creditors. To locate an office in your area, call 1-800-777-7526 (www.cccsf.org). Or, you could contact the National Foundation of Consumer Credit at 1-800-388-2227(www.nfcc.org).

Be cautious about obtaining a debt consolidation loan to pay off your debts. If the interest is too high, you could wind up with an even bigger problem. If you do get a loan, however, make sure that the financial statements turned over to the lender are true and complete.

What will happen if I simply don't pay my debts?

If you signed an agreement putting the property up for collateral—securing the debt—when you bought it, the creditor could repossess the item. But even in the case of unsecured purchases—purchases made with credit cards, for example—the creditor can obtain a court judgment in which property can be repossessed, your wages attached and your bank accounts seized. (CCP §§ 487.010-487.030, 706.050) In addition, if you own a home, a lien could be placed on your property for an unpaid debt. You may, however, be able to file a claim of exemption for your home. In addition, if you have very little income or assets, you may be judgment-proof, in which case your creditors may not take further legal action.

For more information on handling your debts, order a free copy of the State Bar pamphlet “What Can I Do if I Can’t Pay My Debts?” (See Resources.)



Should I file for bankruptcy if I cannot pay my debts?

If you have few assets and little or no income, bankruptcy may not be your best option. It will seriously damage your credit for 10 years and will not necessarily wipe out your debt. For seniors with greater assets and income, however, filing for bankruptcy might make sense if your creditors will not agree to an extended payment schedule. Seek an attorney's advice before making such a decision.

There are two types of personal bankruptcy: Chapter 13 and Chapter 7. In general, if you have a steady income, Chapter 13 allows you to stop all debt collection in exchange for a promise to pay your available funds to creditors as part of a three-to-five-year repayment plan. With a repayment plan, you may be able to keep certain property—such as your car or home—even if it was used to secure a loan. And if you fulfill your obligation, any remaining debt would be canceled at the end of the repayment

period. Under Chapter 7, however, you ask the bankruptcy court to cancel most of your debts because you don't have enough money or property to pay them off. Certain assets of yours are sold to help pay off your creditors. With this type of bankruptcy, you generally would not be able to keep property that was used as collateral for a loan.

Is there anything I can do to stop bill collectors from hounding me?

The law does lay down some boundaries for bill collectors. For example, with debts involving car loans, medical care or charge accounts, such collectors cannot contact you before 8 a.m. or after 9 p.m. without your permission. Generally, they cannot contact you at work—or contact someone other than you—regarding the debt. Nor can they harass you or mislead you with lies. And they must identify themselves when they call you.(CC § 1788.1) For information or to file a complaint, call the California Department of Consumer Affairs' public inquiry line or the Federal Trade Commission (FTC). (See Resources.)

Can I lose my home if I fall behind in my mortgage payments?

Yes. (CC §§ 2920 et seq; CCP § 580) But you may be able to work out a plan with the lender to have your payments reduced or even suspended temporarily. Or, you might be able to refinance your home and establish a lower monthly payment. (This would, however, likely result in additional fees.) Your local HUD office may be able to refer you to a counselor. Do not ignore notices from your lender saying you are in default of your payments. The lender could foreclose and sell your home as soon as four months after a missed payment without going to court.

Some seniors wind up facing foreclosure because a predatory lender has lured them into a home equity loan that they cannot possibly repay. The interest rate and fees may be much higher than those of a standard loan—and may even be illegal. Or, the loan may require a large “balloon” payment at some point. In addition, the lender may avoid explaining all of the terms of the loan or may offer misleading information (seeking, instead, to take advantage of the senior who could be facing a cash crunch). Seniors—who may have little income but greater equity in their homes than many younger homeowners—are primary targets in this type of scam. And even if a loan is illegal, you could still lose your home if you do not take action when you are in default. Obtaining a home equity loan may have some advantages for you. However, only seek such a loan through a reputable lender. Check out the lender before signing anything, and make sure that you fully understand the terms of the loan.

STAYING ON THE JOB

In the face of soaring health care costs and shrinking retirement plans, many seniors in recent years have migrated back to the workplace—or simply stayed on the job. The number of workers age 65 and older has jumped more than 20 percent in the last decade.

Can I be turned down for a job or a work training program because of my age?

No, an employer cannot fire you, deny you a job or discriminate against you simply because you are over 40. (The federal Age Discrimination in Employment Act and California Fair Employment and Housing Act) Nor can an employer turn you down for a training program or educational benefit simply because you are over 40. (GC §§ 12900, 12940, CC § 51.2)

If you experience such discrimination, you can contact the California Department of Fair Employment and Housing or your local Equal Employment Opportunity Commission office. (See Resources.)

Will I lose my Social Security benefits if I stay on the job or go back to work?

No, not if you are 65 or older. And if you do without Social Security benefits until age 70, you will then receive a larger monthly benefit check, regardless of any additional earnings. However, if you collect Social Security payments before you turn 65 and earn additional income, your benefits will be reduced if your earnings exceed a certain amount.

For more information, you should contact your local Social Security Administration office.

GETTING AROUND

Simply getting around, too, can be a challenge in your senior years. While your age alone is not reason enough to limit or take away your driver's license, you can lose your driving rights based on traffic violations, failed written or driving tests, poor vision or various other medical conditions.

Are the driving requirements different for seniors?

No. But when you reach age 70, you can no longer renew your license by mail. (VC § 12814.5) And the Department of Motor Vehicles (DMV) can request a doctor's approval. You may not receive a license if your corrected vision is 20/200 or worse in your best eye. (VC § 12805(b)) The DMV also can refuse to issue or renew your driver's license if you are an alcoholic or addicted to certain drugs, have had lapses of consciousness within the past three years or marked confusion or any physical or mental disorder that could affect the safety of your driving. (VC §§ 12806, 13803)

Can I be reported for inadequate driving?

Yes. Anyone can fill out a DMV Request for Driver Re-Examination to flag an unsafe driver. Officials try to keep the reporter's name confidential. (VC § 1808.5)



Can the DMV simply limit my driving rights rather than revoke my license?

Yes. The DMV may, for safety reasons, issue a driver's license for a shorter period of time than the terms of a regular license. (VC § 12508) Or, depending on your ability, you may qualify for a restricted license that only permits you to drive during daylight hours, for example, or on city streets (not highways or freeways), or within 20 miles of your home. For more information, call your local DMV office or the state DMV at 1-800-777-0133.

Are there any refresher programs to help me improve my driving skills?

Mature driver education courses are available for drivers who are 55 years old or older. Some insurance companies offer discounts to policyholders who complete the course. (VC § 1675) For the locations of "Mature Driving Improvement Programs," call your local DMV office or check the DMV's web site (www.dmv.ca.gov).

Are there any special accommodations for me if I am disabled or unable to drive?



If a physician certifies that you are disabled, you can qualify for a special parking placard. With such a placard, you can park in specially marked, more accessible parking spaces. In addition, you do not have to pay the parking meter. (VC § 22511.55)

Cities may also adopt ordinances permitting physically disabled people age 50 and older to travel on sidewalks via electric cart. A permit and identification sticker is required. (VC § 21114.5)

In addition, communities provide various means of assistance to those who cannot drive or use public transportation. Contact your county's Area Agency on Aging or a local senior center and ask about transportation services for seniors. Some communities provide free rides solely to seniors who are disabled, while others offer services to all seniors. In some communities, special vans make scheduled trips to grocery stores, shopping malls and senior centers. In others, taxi vouchers help seniors keep their doctor appointments.

Isn't walking one of the safest ways to travel?

It may help stave off old age. But it isn't safe if you ignore traffic laws and simply expect motorists to stop for you. Studies show that pedestrians age 65 and older are more than twice as likely to be struck and killed in a traffic accident than pedestrians in any other age group.

Even though a pedestrian has the right-of-way in a marked or unmarked crosswalk at an intersection, the pedestrian must use caution and may not cause unnecessary stops or traffic delays. (VC § 21950) In short, you may not step into traffic even if you are in a crosswalk. Nor can you walk in a bike lane if there is an adjacent walkway for pedestrians. (VC § 21966) And if there are no sidewalks, you must walk on the left-hand side of the road.

HANDLING ELDER ABUSE

An estimated one out of every 20 seniors in this country experiences elder abuse—usually at the hands of a family member. In some cases, the senior winds up penniless. In others, the senior loses his or her home. And statistics suggest that an abused senior is three times more likely to die within the next decade than other seniors of the same age. Still, most elder abuse goes unreported. Your caregiver may be stealing from you, beating you or simply leaving you stranded in your own bed. You may be afraid of what will happen if you tell someone. But help is available. Turn your situation around before it gets worse.

What is elder abuse?

It is the neglect, mistreatment or exploitation of anyone age 65 or older (or any disabled dependent adult). It can involve physical violence, psychological abuse, isolation or a caregiver's neglect. It can also involve the theft or embezzlement of a senior's property. (PC § 368; WI §§ 15610.23, 15610.27)

In short, elder abuse involves various crimes, such as theft, that can strike younger victims as well. However, criminals face stiffer penalties when their victims are 65 years old or older.



What should I do if I suspect someone is abusing or exploiting an elderly friend?

If you suspect that the abuse is occurring in your friend's home, call your local Adult Protective Services (APS) agency. (Check your county phone listings or ask your Area Agency on Aging for the number.) If you suspect that the abuse is occurring in a licensed long-term care facility, such as a nursing home, contact your local long-term care Ombudsman. (To locate the Ombudsman, call 1-800-231-4024.) Your report will be confidential—and you can remain anonymous. (WI §§ 9700 et seq, 15600 et seq) In addition, if you suspect elder abuse of any kind, you can always call the police.

And for further information and guidance, you can order a free publication entitled "A Citizen's Guide to Preventing & Reporting Elder Abuse" by writing to: Crime and Violence Prevention Center, P.O. Box 944255, Sacramento, CA 94244-2550. Or call 916-324-7863. The guide is also available at www.ag.ca.gov.

Am I required to report suspected elder abuse?

Yes, if you are responsible—with or without pay—for taking care of an elder or dependent adult. Other mandated reporters include: administrators, supervisors and licensed staff of facilities providing care and services to the elderly; Adult Protective Services employees; physicians; police officers; and clergymen. If a mandated reporter fails to report suspected abuse, he or she could be charged with a misdemeanor. (WI § 15630) The law also encourages everyone else to report elder abuse as well.

Is there anyone who will check on my elderly father's well-being for me?

Yes. If you are worried about a parent or elderly loved one who lives in a different community, you can contact the local law enforcement agency in his or her community and request a well-being check.

What will happen if someone finds out that my grown child is hurting me?

It depends on the abuse. But if you are being mistreated in any way, you need help. And your child needs help as well. Call your local Adult Protective Services office and explain your situation to a social worker. It is the social worker's job to help ensure that you are safe in your home. (WI § 15762)

Is domestic violence the same as elder abuse?

No. And different laws apply to each as well. The law defines domestic violence as certain kinds of abuse directed toward a spouse or former spouse, cohabitant, or a person of any age with whom the abuser has had a "dating or engagement relationship," or with whom the abuser has had a child. (FC §§ 6203, 6211) Such violence is behavior driven by a need to control. It can range from threats to unwanted sexual touching and hitting. And it cuts across all cultures, ethnic backgrounds, education levels and income brackets. If a victim of domestic violence is age 65 or older, however, the case may be handled as elder abuse.

What can I do to protect myself from an abusive caregiver or spouse?

If you are in immediate danger, call 911. When the police arrive, explain what happened. In both elder abuse and domestic violence cases, the officers can contact an on-call judicial officer and issue you an Emergency Protective Order (also called an EPO) immediately. This legally prohibits the abuser from coming near you. The EPO will remain in effect for five court days or seven calendar days. You could also seek a Temporary Restraining Order (also called a TRO). Just fill out the forms at your local courthouse. The TRO will go into effect as soon as it has been signed by a judge and delivered to the abuser. And a TRO may be made "permanent," which means that it will be good for up to three years and can be renewed. (WI § 15657.03; FC § 6306)

But while a restraining order may help protect you, be aware that it does not eliminate the risk of future violence.

EXAMPLES OF ABUSE

Your caregiver or a "new friend" persuades you to sign a power of attorney so that he can handle your affairs for you—and then sells your home for the cash.

Malnourished and covered with bedsores, you lie stranded in your own bedroom while your live-in son is busy emptying your bank accounts.

A home repairman persuades you to pay cash on the spot for a "great" home improvement deal—and then fails to do any work.

You forget to take your medication and a nursing home staff member slaps you in the face.

Restraining orders also may be obtained in elder abuse cases in which a senior has suffered physically or mentally from financial abuse or neglect.

And in cases of domestic violence, state law allows victims to keep their addresses confidential through the state's Safe at Home program. This means that your home address need not appear on court papers or other official documents. For more information, call 1-877-322-5227. And to locate a local shelter or counseling, call the National Domestic Violence 24-hour hotline at 1-800-799-7233 (1-800-787-3224 for TTY). Another resource is the State Bar pamphlet "Can the Law Help Protect Me from Domestic Violence?" (See Resources for contact information.)

AVOIDING CONSUMER SCAMS

Americans lose an estimated \$40 billion a year in telemarketing fraud alone, and another \$4 billion in mail scams. And the victims, for the most part, are seniors. You could be approached through the mail, by telephone, via e-mail or at your front door. Know your rights and how you might be vulnerable. As the old adage goes: If it seems too good to be true, it probably is.

- **Charitable Donation Con:** Watch out for fake charities. Anyone soliciting funds for charitable purposes must register with the state Attorney General's Office. (BPC § 17510.85) To find out if a charity is registered, call the Attorney General's Office (see Resources) or check the web site (www.ag.ca.gov/charities) You could also check with your local Better Business Bureau.
- **Door-to-Door Solicitation:** Ask to see a business permit. (Most cities require one.) Resist pressure to buy anything on the spot. If you do make a purchase, remember that you usually have three business days to legally cancel such a contract if it was made in your home or in a temporary place, such as a restaurant, hotel room or convention center. (CC § 1689.6 (a)) Contact your local Better Business Bureau to check out the business. And to report a fraud, call your local police or county district attorney's office.
- **Financial Advisors and Investment Scams:** Beware of investment seminars touting get-

TYPES OF ELDER ABUSE

Abandonment is the desertion or "willful forsaking" of an elder person by a caregiver under circumstances in which a reasonable person would continue to provide care. (WI § 15610.05)

Financial abuse occurs when anyone takes or keeps an elder's property for "wrongful use" or "with the intent to defraud" or both. (WI § 15610.30) For some examples of financial abuse, see the section entitled Avoiding Consumer Scams.

Isolation involves preventing the senior from receiving mail or telephone calls, or from contact with family and friends. The senior might even be locked in a room or tied to a chair. (WI § 15610.43)

False imprisonment is when someone uses violence, menace, fraud or deceit to hold a senior against his or her will. (PC § 368 (f))

Psychological abuse is behavior intended to create mental suffering (fear, agitation, confusion or other forms of emotional distress) in the senior. (WI § 15610.53)

A caregiver—paid or unpaid—could be guilty of neglect if he or she fails to adequately assist the senior with personal hygiene or to provide food, clothing, shelter or needed medical care. (WI § 15610.57)

Physical abuse could be assault, battery, unreasonable physical restraint, sexual assault, rape, incest or the unauthorized use of chemical restraint or psychotropic medication. (WI § 15610.63)

rich-quick schemes, such as highly profitable investments in leased pay phones. This is just one example. Investigate the “investment” before investing. Call the state Department of Corporations’ toll-free hotline at 1-866-ASK-CORP (275-2677). And for further information on protecting yourself, check out the Department of Corporations’ new program “Seniors Against Investment Fraud” (SAIF). For a few SAIF tips, see Avoid Scams on the next page.

- **Funeral and Cemetery Fraud:** Watch out for high-priced sales pitches. “The Consumer Guide to Funeral and Cemetery Purchases” —available at no cost from the Department of Consumer Affairs’ Cemetery and Funeral Bureau—details your requirements, pre-needs arrangements and what to look for in a contract. You can also call the Cemetery and Funeral Bureau to verify a funeral establishment’s license or file a complaint. (See Resources.) And check with your local Better Business Bureau as well.
- **Home Repair:** It may sound like a good deal. A repairman will fix your roof with “left-over” materials from another job. You pay cash—and he does a shoddy job or nothing at all. Or, a plumber fixes your clogged toilet and presents you with a \$10,000 bill. Before hiring any contractor, get estimates from at least two others, seek references and put everything in writing. And be aware that your home cannot be used as collateral in any home improvement contract if you are 65 years old or older. (CC § 1804 (I)(j); BP § 7159.2) Contact the Contractors State License Board (see Resources) to check the contractor’s license and any past complaints. And never pay more than the maximum allowed by law—usually 10 percent of the repair price or \$1,000, whichever is less—before the work is done. For additional tips, contact the licensing board for a copy of “What You Should Know Before You Hire a Contractor.”
- **Identity Theft:** Safeguard your Social Security number and credit cards. Thieves can use them to open new credit card accounts in your name. Keep tabs on your credit by periodically ordering credit reports from the major credit agencies. And keep photocopies of the credit cards and identification that you carry in your wallet. (See Protect Your Identity and Credit on the next page.)
- **Medicare Fraud:** Never give your Medicare number to a stranger. And always check your Medicare statement to verify that you actually received the services charged to Medicare. If you suspect provider fraud, call Medicare. And to report suspected Medi-Cal provider fraud, call the Bureau of Medi-Cal Fraud and Elder Abuse in the state Attorney General’s Office. (See Resources.)
- **Revocable Living Trust Mills:** Beware of “trust mill” marketing schemes in which salespeople pose as experts in estate planning to gain your trust and confidence. These unqualified “experts” seek to obtain your personal financial information with the ulterior motive of selling you both living trusts and annuities, which may not be appropriate for you. Such tactics may violate insurance code laws and laws prohibiting the unauthorized practice of law. To report a scam, call your local district attorney’s office and the California Department of Insurance. You could also contact the Attorney General’s Office. (See Resources.)
- **Telemarketing/Mail Fraud:** It can be difficult to distinguish a legitimate telemarketing caller from one who is not. Steer clear of any caller or mailer announcing that you have won a sweepstakes or foreign lottery—and need to pay a “fee” or “tax” to collect your winnings. (The cross-border sale or purchase of lottery tickets is illegal—and so is any advance charge for collecting the prize.) To file complaints, contact the state Attorney General’s Office and the National Fraud Information Center. (See Resources.)

Other types of scams include Internet fraud and real estate predatory lending scams (see Dealing with Debt). In addition, you may give someone a power of attorney (see Planning Ahead) and then find out that he or she has stolen your savings. To report a fraud, call your local law enforcement agency or district attorney's office.

How can I avoid being solicited by telemarketing callers and marketing mail?

You can ask telemarketing callers to put you on their "do not call" list. If they keep calling you, report them to the FTC. (See Resources.) In addition, tell businesses not to sell your name to other companies. To remove your name from telephone and mailing lists, write to the Direct Marketing Association Inc. (www.dmaconsumers.org) at the addresses listed below. To pre-register for the National Do Not Call Registry, visit the California Attorney General's web page at <http://nocall.doj.state.ca.gov>. After July 1, 2003, contact the FTC to register.

Mailing lists:

DMA Mail Preference Service
Box 643
Carmel, NY 10512

Telephone lists:

DMA Telephone Preference Service
Box 1559
Carmel, NY 10512

How can I keep my Social Security number confidential?

It may be difficult. Increasingly, however, the law is providing you with added protection. For example, state law prohibits any business or individual—with the exception of a state or local government agency—from publicly displaying your Social Security number. Nor can your number be printed on any card required to access products or services. In addition, your health care provider can no longer print your Social Security number on your identification card. And you cannot be required to transmit your number over the Internet unless the connection is "secure" or "encrypted." (CC §§ 1798.85 et seq) For more information, call the Department of Consumer Affairs' Office of Privacy Protection. (See Resources.)

PROTECT YOUR IDENTITY

If you are a victim of identity theft:

Call the credit agencies listed below and put a fraud alert on your credit report. (CC §§ 1785 et seq) Request a free credit report.

File a police report.

File a complaint with the Federal Trade Commission (FTC) and obtain an FTC ID Theft Affidavit. (See Resources.)

Fill out the ID Theft Affidavit and send it by certified mail (with a copy of the police report) to all businesses where a new account was opened.

Call the Attorney General's ID Theft Hotline (1-888-880-0240) if: you have filed a police report and are facing criminal charges or a criminal record stemming from the theft of your identity or are seeking to sue a creditor to establish yourself as an identity theft victim.

If your mail is stolen, contact the U.S. Post Office. If your Social Security card is lost or stolen, call the Social Security fraud hotline. (See Resources.) And if your driver's license is stolen, call the local DMV. You could call the DMV fraud hotline (1-866-658-5758) as well.

What should I do if I receive mail-order merchandise that I never ordered?

If you did not order it, it is considered an unconditional gift and you do not have to pay for it—or return it. (CC § 1584.5)

What can I do if someone steals my credit card and runs up the bill?

Notify the credit card company immediately. If someone runs up your credit card or uses your debit card without authorization, you are only liable for up to \$50 if you promptly contact the company. (CC §§ 1747.9, 1748.31) It is also important to file a police report to document the loss and your response.

CREDIT

Report Fraud / Request Credit Reports

Experian

1-888-397-3742 (fraud alerts and credit reports)

Trans Union

1-800-680-7289 (fraud alerts) / 1-800-916-8800 (credit reports)

Equifax

1-800-525-6285 (fraud alerts) / 1-800-685-1111 (credit reports)

GETTING DIVORCED OR REMARRIED

Seniors own the bulk of the state's wealth in savings, home equity and other property. At this point in your life, you may have more at stake when you change your marital status. Or, you may be a widow living on Social Security income alone. If you choose to remarry, be aware of its potential impact on your finances.

If I get divorced, can I still get Social Security benefits on my husband's work record?

Yes, if your ex-husband is receiving benefits or is deceased. However, you must have been married for at least 10 years and you must remain single. In addition, if your ex-husband is 62 years old or older and has not applied for benefits, you can still receive benefits on his record as long as you are at least 62 as well. You must, however, be divorced and single for at least two years before seeking such benefits.

Will I continue to receive Social Security benefits as a widow (or widower) if I remarry?

Yes, if you are at least 60 years old when you remarry. (A widow or widower isn't actually eligible for benefits until age 60 or, if disabled, until age 50.) Or you could apply to receive benefits based on your new spouse's work record instead if those benefits would be higher. If you remarry before turning 60, however, you will be ineligible for widow's benefits throughout your marriage. For more information, call Social Security. (See Resources.)

Do I need to change my will in order to remove my ex-spouse as a beneficiary?

Unless your will states otherwise, your divorce automatically revokes any provisions naming your ex-spouse as a beneficiary or as an executor, trustee, conservator or guardian. (Prob. § 6122) You would, however, have to change the beneficiary designations for your life insurance and individual retirement accounts.

Is it true that I will pay higher taxes if I remarry?

Currently, married people do pay higher taxes than those who are single. Under new federal law, however, this so-called marriage penalty will begin to decline in 2005.

AVOID SCAMS

Don't invest until you investigate. Call the Department of Corporations' toll-free number at 1-866-ASK-CORP (275-2677) before purchasing any type of financial product.

Don't invest right away: Slow down and take your time. Most fraud occurs because the con artist talks the victim into making a "rushed" decision.

Don't be too trusting. Remember, appearances can be deceiving.

Don't invest more than you can afford to lose. How much are you willing to lose if the investment turns out to be a scam? If you lose everything you have, what will you do?

Don't believe "guaranteed" large rates of return on your investment. There are always risks to investing.

Don't invest until you complete the "four C's": Consider your options. Compare the offer to others. Consult with someone you trust. Call the Department of Corporations toll-free number listed above.

Source: California Department of Corporations, Seniors Against Investment Fraud (SAIF)

RAISING YOUR GRANDCHILDREN

Some 4.5 million children in this country currently live under a grandparent's care. Drug addiction, family violence, abandonment, poverty and other reasons may be to blame. But in raising your grandchildren, simply opening your home to them may not be enough. Taking responsibility for a child can involve complicated legal options, requirements and rights.

Should I seek guardianship of my grandchildren if I am raising them?

It depends on the situation. If it appears that the children will remain in your care, you may want to consider becoming their legal guardian. This does not terminate the parents' parental rights and obligations, but it does give you legal custody. This means that you would have the legal right to make many decisions regarding their education and care.

If, however, the parents are only temporarily unable to care for the children, it may be sufficient to simply fill out a Caregiver's Authorization Affidavit. (FC § 6550) This would allow you to get them into school and authorize school-related medical care.

How do I become a guardian?



You can file a petition in court for appointment as guardian. Or, the child, if he or she is at least 12 years old, can file the petition. (Prob. § 1510) A court-ordered, confidential investigation will take place. The judge may place the child in your custody if he or she finds that it would be in the child's "best interests." (Prob. §§ 1513, 1514) However, if either parent objects to the guardianship, the judge will not appoint you guardian unless he or she finds that granting custody to the parent would be "detrimental" to the child and that the guardianship would be in the child's best interests. (FC § 3041)

Is there any financial assistance available for my grandchildren?

Yes. If you are caring for a grandchild or other young relative, you may apply for CalWORKs benefits for yourself and the child if you meet certain eligibility requirements. (WI §§ 11200-11215) And if you are seeking benefits for the child alone—not yourself—your employment status will have no bearing on the child's eligibility. Nor is there a maximum time allowance for receiving such benefits. Contact your local social services office for more information.

Do I have any right to visit my grandchildren?

Again, it depends on the situation. If either parent has died, for example, the child's siblings, aunts and uncles, and grandparents may be granted reasonable visitation if it is, as the judge sees it, in the child's best interests. (FC § 3102(a)(c)) A grandparent may also be granted visitation in the event that the child's parents are divorced or legally separated. (FC § 3103)

A grandparent may not, however, file a petition for visitation rights if the child's parents are married unless: the parents are separated, one of them has disappeared for at least a month, one of the parents joins in the grandparent's petition or the child is not living with either parent. (FC § 3104)

FINDING A CAREGIVER OR NURSING HOME

Recent studies suggest that Americans age 65 and older are less likely to be chronically disabled or living in a nursing home today than seniors of the same age were two decades ago. Still, there may come a time when you can no longer manage on your own. You may simply need help with daily grooming, bathing, preparing meals—or just getting around. Or, you may need round-the-clock care in a nursing home. There are options available.

How do I find help for my elderly mother who wants to continue living in her own home?

First, assess your mother's particular needs. (See Hiring Help in the Home on the next page.) She may qualify for In-Home Supportive Services (IHSS) if she has very limited resources. IHSS is a Medi-Cal program that pays for in-home assistance when it is necessary to ensure the elder person's safety. (WI § 12300(b)) To locate IHSS, call your local Area Agency on Aging.

If she does not qualify for IHSS and simply needs assistance with daily tasks, you could hire a caregiver through a home care agency or home care referral company. Or, you could hire someone on your own. However, if you are the caregiver's direct employer, you will be responsible for paying employment taxes and workers' compensation.

But whether you hire someone through an agency or on your own, be extremely cautious, seek referrals and ask a lot of questions. Such caregivers are not regulated by anyone.

Caregivers who provide medical care, however, must be licensed or certified. You can hire such caregivers through a licensed home health care agency. Home health care agencies, certified nurse assistants, registered nurses, nurse practitioners and licensed vocational nurses all must be licensed or certified by the state. The Department of Health Services can verify a caregiver's license or certificate or refer you to the appropriate agency. (See Resources.)

Will Medicare cover the costs of a caregiver?

It depends. If a doctor prescribes medically necessary home health care for a homebound senior, Medicare will cover some of the costs. (You must use a Medicare-approved home health agency.) Medicare will not, however, pay for a caregiver who provides non-medical assistance. This is one reason why some seniors and their loved ones invest in long-term care insurance. (See Obtaining Health Care and Benefits.)

What other assistance is available for those who are elderly and homebound?

You can get hot meals delivered to your home through Meals on Wheels. And to give caregivers a break, respite care is available. Check into Adult Day Care Centers and Adult Day Care Health Centers (ADHC). In addition, community care facilities may fill unused beds on a short-term basis to provide respite care for seniors who need 24-hour supervision. (HSC § 1505.5)



Where can I find information on nursing homes?

Your local Area Agency on Aging is a good place to start. You might also check the California Department of Health Services web site. The California Advocates for Nursing Home Reform (CANHR) and AARP provide information as well. (See Resources.) To check on a particular facility, you might try contacting your local Ombudsman.

And to verify the license of a nursing home or other skilled long-term care facility, call the Department of Health Services licensing and certification unit at 1-800-236-9747.

Will Medicare pay some of my mother's nursing home expenses?

Possibly, but for no longer than 100 days and only if your mother requires skilled care. In addition, Medicare would only cover part of the costs. After the first 20 days, your mother would have to make a co-payment of \$105 a day. If she qualifies for Medi-Cal, however, more assistance may be available. Generally, Medi-Cal covers longer stays in a nursing home. For more information, you could contact Medicare or your local HICAP advisor. (See Resources.)

Is there any assistance available if I take time off work to care for my ailing mother?

Maybe. Beginning in mid-2004, new family temporary disability insurance may provide you with up to six weeks of pay if you take time off work to care for a seriously ill child, spouse, parent or domestic partner, or to bond with a new child. Workers will contribute to the new insurance program. (UIC §§ 984, 2116, 2601, 2613, 2708, 3254, 3300)

Current law allows workers, if they meet certain criteria, to take a leave of absence for up to 12 weeks during a 12-month period if a parent or spouse is undergoing treatment in a hospital, hospice or other health care facility. (Family and Medical Leave Act, California Family Rights Act, GC § 12945.2)

HIRING HELP IN THE HOME

Assess your needs. Do you simply need help with such daily activities as bathing, dressing and preparing meals? Or do you need medical or skilled nursing care as well? And what resources do you have available to pay for such assistance?

Ask a lot of questions. Does the agency screen and train caregivers? Do caregivers undergo a criminal background check? (A certified home health aide, for example, must pass such scrutiny and cannot have certain convictions.) Does the agency handle all of the taxes and insurance? Are the agency and worker both bonded? Will Medicare, Medi-Cal or your private insurance cover any of the costs?

Find out your responsibilities. What taxes will you be required to pay if you hire the worker on your own? For more information, see the Employment Development Department publication "Household Employer's Guide." To obtain a copy, call 1-888-745-3886 (www.edd.ca.gov).

Seek referrals from a trustworthy source. Avoid using a "help wanted" ad to hire a caregiver. You do not know the background—or motives—of those who respond. Be wary of ads seeking employment for an individual caregiver for the same reason. For lists of home care agencies and home health care agencies, contact your local Area Agency on Aging. (See Resources.)

Consider taking some additional precautions if you do hire someone. It might be wise, for example, to move your valuables to another location for safekeeping—or at least lock them up. Unfortunately, seniors have lost many precious belongings to dishonest caregivers.

Am I legally required to support my penniless, bedridden father?

Maybe. If you have been taking care of him—or have promised to take care of him—you are legally required to continue giving your best effort. You cannot simply leave him helpless in his home. (FC §§ 4400, 4401; PC § 270c) If you do fall short, your father or the county (on his behalf) can seek such support from you. (FC § 4404) If, however, your father abandoned you for at least two years when you were a child, you may not be required to take care of him now. Nor would you be liable for supporting him if he is receiving certain governmental aid. (WI § 12350)

What is hospice care?

Hospice care is a program—usually a mix of physical, emotional, spiritual and practical care—for the terminally ill. It may take place in a patient's home or in a specially designed facility. A doctor's sign-off is required for participation. And payment is often on a sliding scale based on income. Medicare covers hospice care as does Medi-Cal and other insurance programs.

LOSING A SPOUSE OR PARENT

You may be overwhelmed with grief right now. You may want to leave the administrative matters for a later day. But there are notifications and legal steps that should not be postponed.

- Make funeral and burial arrangements.
- Obtain several copies of the death certificate.
- Gather relevant documents, such as the will; trusts; stock, bank account and annuity statements; and insurance policies.
- Contact the Social Security Administration (if the deceased was an eligible recipient).
- Send a notification and death certificate to the director of health services (if the deceased was a Medi-Cal recipient) within 90 days after the death.
- Notify any life insurance companies of the death.
- Contact the trustee of any trust and/or the attorney who prepared it.
- Contact the executor of the will and/or the attorney who prepared it.
- Call the administrator of the decedent's pension plan.
- Notify the decedent's banks and financial institutions.

- Contact credit card companies.
- Be sure that insurance or Medicare claims have been processed before paying any Medical bills.

GETTING LEGAL ASSISTANCE

Every county has free legal services for seniors under the federal Older Americans Act. The programs differ, however, and the criteria for accepting cases vary as well. These programs typically assist those in the greatest need, such as seniors facing eviction or the loss of needed public benefits.

If your county's legal services program cannot assist you, ask a friend, co-worker or business associate to recommend a lawyer. Or call a State Bar-certified lawyer referral service. (To find one, check your phone book, call a local bar association or visit the public services section of the State Bar's web site at www.calbar.ca.gov.)

The State Bar also certifies "specialists" in eight legal areas. (Not all attorneys seek such certification, however.) For lists of specialists, go to www.californiaspecialist.org. Or, for a list of estate planning specialists, call the Trusts and Estates Section's "Senior Hotline." And for more information, order the State Bar pamphlet "How Can I Find and Hire the Right Lawyer?" (See Resources.)

If you are at least 60 and live in Northern California, you may get free legal advice by calling the Northern California Senior Legal Hotline. (See Resources.)

It is always best to consult a qualified attorney if you have a legal problem. But if you cannot afford to hire a lawyer, you do have other resources. For example, you could seek guidance from your local county law librarian. Law librarians cannot give legal advice, but they can direct you to the appropriate resources and legal forms for your matter. You could also visit the Judicial Council's self-help web page (www.courtinfo.ca.gov), where you will find a wealth of resources. And watch for a new California self-help web site (soon accessible via www.calbar.ca.gov, www.courtinfo.ca.gov and www.lawhelp.org) that will provide legal information and referrals to local legal services programs.

AARP (www.aarp.org)
1-916-446-AARP (446-2277) (information and services for seniors)

Alzheimer's Association (www.alzncal.org)
1-800-660-1993

California Advocates for Nursing Home Reform (www.canhr.org)
1-800-474-1116 (consumer line) (www.nursinghomeguide.org)

California Attorney General's Office (www.ag.ca.gov)
1-800-952-5225 (public inquiry, telemarketing and mail fraud)
1-888-880-0240 (identity theft victims facing criminal charges)
1-916-445-2021 (charitable trust registration)
1-800-722-0432 (Medi-Cal provider fraud, elder abuse in long-term facility)

California Department of Aging (www.aging.ca.gov)
1-800-510-2020 (referrals to local Area Agencies on Aging and HICAP)

California Department of Consumer Affairs (www.dca.ca.gov)
1-800-952-5210 (public inquiries, consumer complaints, license checks)
1-866-785-9663 (Office of Privacy Protection) (www.privacy.ca.gov)
1-916-322-7737 (Cemetery and Funeral Bureau)

California Department of Corporations (www.corp.ca.gov)
1-866-ASK-CORP (275-2677) (information and license checks)
(Seniors Against Investment Fraud (SAIF))

California Department of Fair Employment and Housing (www.dfeh.ca.gov)
1-800-884-1684 (discrimination complaints and referrals)
1-800-233-3212 (housing discrimination complaints)

California Department of Health Services (www.dhs.ca.gov)
1-800-236-9747 (licensing, certification and referrals)

California Department of Insurance (www.insurance.ca.gov)
1-800-927-HELP (927-4357) (insurance claims problems, living trust scams)

California Department of Managed Care (www.hmohelp.ca.gov)
1-888-HMO-2219 (466-2219) (questions, complaints about HMOs)

California Department of Social Services (www.dss.cahwnet.gov)
www.cclld.ca.gov (local community care licensing offices)

California Medical Board (www.medbd.ca.gov)
1-800-633-2322 (complaints regarding physicians)

California Registry (www.calregistry.com)
1-800-777-7575 (information on various living arrangements for seniors)

California State Controller's Office (www.sco.ca.gov)
1-800-992-4647 (Bureau of Unclaimed Property)
1-800-952-5661 (applications for property tax postponement)
1-916-445-6321 (information on estate and gift taxes)

Contractors State License Board (www.cslb.ca.gov)
1-800-321-2752 (license checks, publication requests)

Eldercare Locator Service (www.eldercare.gov)
1-800-677-1116 (referral to your local Area Agency on Aging)

Federal Trade Commission (www.ftc.gov / www.consumer.gov/idtheft)
1-877-438-4338 (identity theft complaints, ID Theft Affidavits)
1-877-382-4357 (information, consumer complaints against businesses)

Franchise Tax Board (www.ftb.ca.gov)
1-800-338-0505 (Homeowner and Renter Assistance Program)

Internal Revenue Service (www.irs.gov)

1-800-829-1040 (tax information)

Medicare (www.medicare.gov)

1-800-633-4227 (information on Medicare, Medicare provider fraud)

National Fraud Information Center (www.fraud.org)

1-800-876-7060 (report telemarketing and Internet fraud, information)

Northern California Senior Legal Hotline (www.seniorlegalhotline.org)

1-800-222-1753 (legal advice for Northern Californians)

1-916-551-2140 (Sacramento residents)

Railroad Retirement Board (www.rrb.gov)

1-800-808-0772 (referrals to local offices)

Social Security Administration (www.ssa.gov)

1-800-772-1213 (earnings/benefits status, referrals to local offices)

1-800-269-0271 (Social Security fraud)

The State Bar of California (www.calbar.ca.gov)

1-415-538-2280 (free consumer pamphlets)

1-800-843-9053 (license checks, complaints regarding attorney conduct)

1-888-460-7364 (Senior information hotline)

U.S. Department of Housing and Urban Development (www.hud.gov)

1-800-569-4287 (housing counseling referral line)

1-800-877-0246 (housing discrimination: information, complaint filing)

U.S. Department of Veteran Affairs (www.va.gov)

1-800-827-1000 (information, location of nearest office)

U.S. Equal Employment Opportunity Commission (www.eeoc.gov)

1-800-669-4000 (information, employment discrimination complaints)

For additional copies of "Seniors and the Law," please e-mail your request (including your name, mailing address, phone number and number of copies desired) to: BARCOMM@calbar.ca.gov. Or, mail your request to: "Seniors and the Law," Office of Media and Information Services, The State Bar of California, 180 Howard St., San Francisco, CA 94105-1639.

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